

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

- against -

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 E

**AFFIRMATION OF JOHN E.
HALL**

JOHN E. HALL, pursuant to CPLR 2106, affirms as follows under the penalties of perjury:

1. I am an attorney duly admitted to practice in the Courts of the State of New York and am a member of Covington & Burling LLP, counsel for Defendants National Football League ("NFL") and NFL Properties LLC ("NFL Properties") (together with the NFL, the "NFL Policyholders").

2. I submit this Affirmation in support of the NFL Policyholders' Motion for Leave to File Amended Answer to Amended Complaint and Second Amended Counterclaims and Cross-claims. I make this Affirmation upon personal knowledge and a review of the documents described herein, which give rise to the good cause to amend the NFL Policyholders' pleading on motion.

3. I attach hereto as Exhibit A a proposed Amended Answer to Amended Complaint and Second Amended Counterclaims and Cross-claims ("Second Amended Pleading"). The proposed Second Amended Pleading adds counterclaims and cross-claims for (1) declaratory relief as to the duty to indemnify as to Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, and Travelers Property Casualty Company of

America, Pacific Indemnity Company, TIG Insurance Company, Century Indemnity Company, Federal Insurance Company, Great Northern Insurance Company, Guarantee Insurance Company, Hartford Accident & Indemnity Company, The North River Insurance Company, United States Fire Insurance Company, ACE American Insurance Company, Illinois Union Insurance Company, Allstate Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, Chartis Specialty Insurance Company, Chartis Property Casualty Company, Continental Casualty Company, Continental Insurance Company, Illinois National Insurance Company, Munich Reinsurance America, Inc., National Union Fire Insurance Company of Pittsburgh, PA, New England Reinsurance Corporation, Bedivere Insurance Company, Vigilant Insurance Company, Westchester Fire Insurance Company, XL Insurance America, Inc., XL Select Insurance Company, and Westport Insurance Corporation (“Westport”) (together, the “Insurers”); (2) breach of the duty to indemnify as to certain of the Insurers; and (3) for declaratory relief as to certain of the Insurers’ bad faith refusal to content to settlement.

4. I attach hereto as Exhibit B a comparison between the Second Amended Pleading and the NFL Policyholder’s Answer to Amended Complaint and Amended Counterclaims and Cross-claims, showing the changes proposed to be made in the Second Amended Pleading.

5. On August 21, 2012, Plaintiffs brought suit against the NFL Policyholders and certain of the Insurers seeking a declaration regarding Plaintiffs’ obligations under insurance policies issued to the NFL Policyholders. I attach hereto as Exhibit C copies of the Complaint and Amended Complaint in this action.

6. Many of the Insurers have served responsive pleadings in this action. In those pleadings, the Insurers have sought declarations about their own respective obligations under insurance policies issued to the NFL Policyholders. I attach hereto as

Exhibit D copies of the operative responsive pleadings filed by the Insurers (other than Plaintiffs) in this action.

7. No claims have heretofore been asserted against Westport by any of the other Insurers in their pleadings.

8. Since the inception of this matter, the NFL Policyholders have taken the position that there is no justiciable controversy regarding the Insurers' indemnity obligation under the policies they issued to the NFL Policyholders (the "Policies") at least until the NFL Policyholders incur liability arising from the Underlying Lawsuits.¹ Consequently, the NFL Policyholders' Answer, Counterclaims, and Cross-claims ("Answer") only asserted counterclaims and cross-claims against certain of the Insurers who have been obligated to defend the NFL Policyholders in the Underlying Lawsuits, and the counterclaims and cross-claims in the Answer related only to those Insurers' duty to defend and did not include counterclaims and cross-claims with respect to indemnity under the Policies. I attach hereto as Exhibit E a copy of the Answer.

9. Plaintiffs filed an Amended Complaint on December 2, 2016. Exhibit C.

10. Pursuant to the Case Management Order entered on November 14, 2016 ("CMO"), the deadline for the NFL Policyholders to file amended pleadings responding to the Amended Complaint was January 6, 2017. I attach hereto as Exhibit F a copy of the CMO.

11. The NFL Policyholders filed their Answer to Amended Complaint and Amended Counterclaims and Cross-claims ("Amended Pleading") on January 6, 2017. Because the NFL Policyholders still had not incurred any liability in the Underlying Lawsuits

¹ This term has the same meaning as in the accompanying Affidavit of Merit of Anastasia Danias Schmidt.

at that time, the counter claims and cross-claims in the Amended Answer related only to the duty to defend and were asserted only against Insurers who owed such a duty. I attach hereto as Exhibit G a copy of the Amended Pleading.

12. As Westport has not incurred an obligation to defend the NFL Policyholders, neither the Answer nor the Amended Pleading added Westport as a cross-claim defendant.

13. Since the Class Settlement² and the judgment entered in connection with the Class Settlement became final and effective on January 7, 2017 (*see* Affidavit of Merit of Anastasia Danias Schmidt ¶¶ 9-10) and the NFL Policyholders were required to make and made their first payments due under same on or about February 6, 2017, the NFL Policyholders have causes of action against all the Insurers, including Westport, related to the Insurers' obligation to indemnify the NFL Policyholders for costs and damages incurred in connection with the Underlying Lawsuits. Similarly, the NFL now for the first time has causes of action against certain of the Insurers for their bad faith refusal to consent to the Class Settlement.

14. The CMO states in paragraph (1)c.ii. "that it is agreed that leave shall be freely granted to the NFL Parties to further amend [their] pleading in the future to add a claim for breach of the duty to indemnify in the event any underlying settlement or judgment becomes final." It also states that "[t]he Parties, having conferred, anticipate that a small number of additional insurers of the NFL Parties may be added. . . ." Exhibit F.

15. Consequently, the NFL Policyholders seek leave to file their Second Amended Pleading making various changes reflected in Exhibit B, including adding Westport as a cross-claim defendant and to adding counterclaims and cross-claims for (1) declaratory

² This term has the same meaning as in the accompanying Affidavit of Merit of Anastasia Danias Schmidt.

relief as to the duty to indemnify as to all Insurers; (2) breach of the duty to indemnify as to certain Insurers; and (3) for declaratory relief as to certain of the Insurers' bad faith refusal to content to settlement.

New York, New York
February 15, 2017

/s/ John E. Hall

John E. Hall